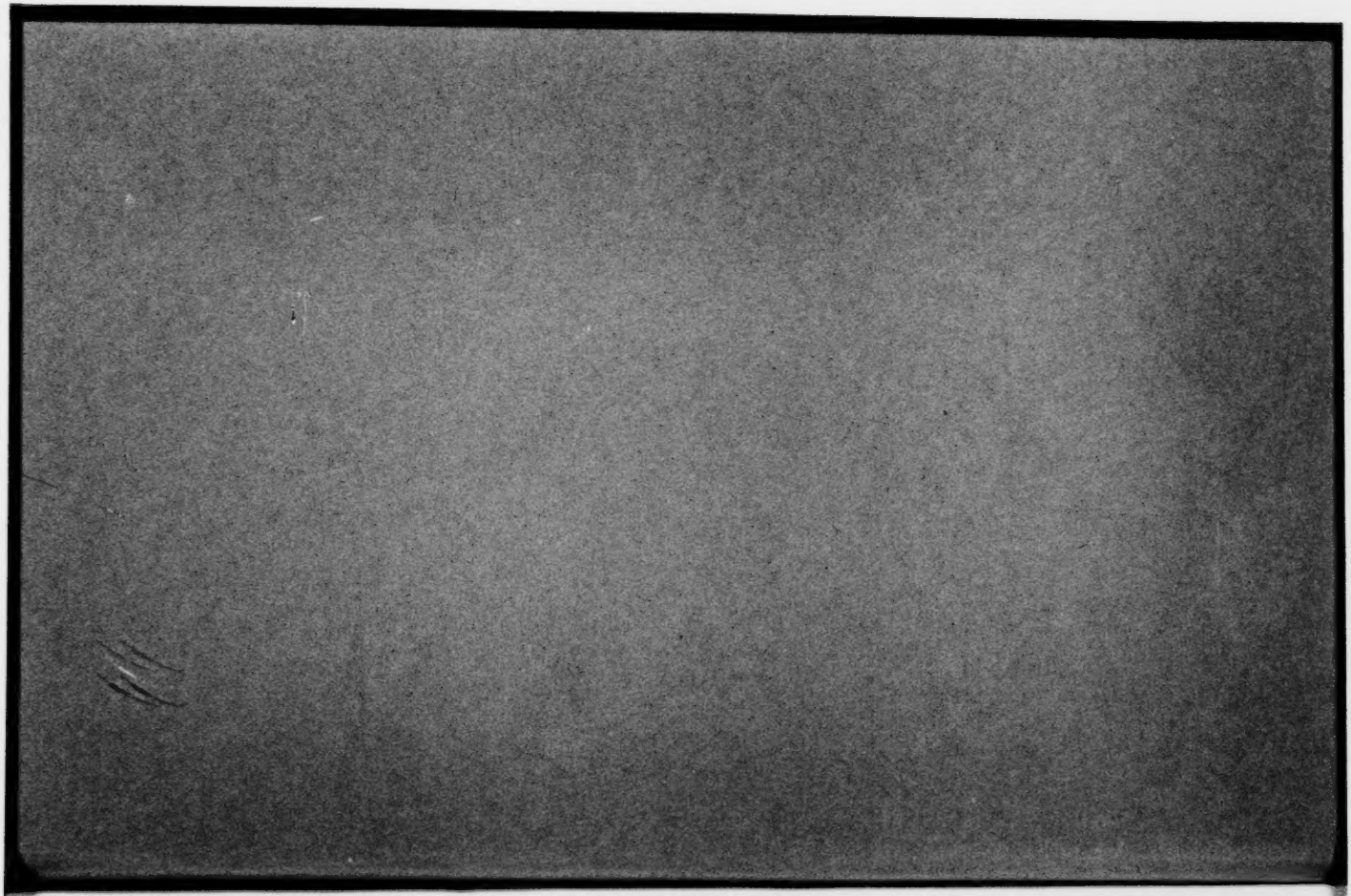

INDEX

SUBJECT INDEX

Statement with reference to facts and jurisdiction..... 4

Brief in opposition to Petition for Writ of Certiorari.... 4

Reply to Petitioner's Proposition (1).....4-5-6

Reply to Petitioner's Proposition (2)..... 7-8

Reply to Petitioner's Proposition (3).....8-9-10

STATUTES REFERRED TO

Social Security Act of 1935..... 5-9

National Labor Relations Act..... 5-6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 1011

ALTON RUFUS PESNELL,

Petitioner,

v.

DEPARTMENT OF INDUSTRIAL RELATIONS OF ALABAMA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF AND ARGUMENT

I

Respondent does not concede the correctness of the claims presented in the petition with respect to "Statement of Matters Involved" nor "Jurisdictional Statement", but for the purposes of this brief, will confine itself to the following argument:

II

On pages 5 and 6 of the petition, the petitioner enumerates the three questions which he says he is presenting for consideration by this Court. These questions will be considered in the order there appearing.

(1) The first question presented is said to be this:

> "1. Does the decision of the Supreme Court of Alabama, interpreting 'labor dispute' as used in Section 6 of the Alabama Unemployment Compensation Act (Acts of Alabama of 1935, page 950), so as to include mere argument or debate by representatives when bargaining for a new contract, and denying benefits, render said Alabama statute repugnant to the Federal law giving collective bargaining and unemployment benefits?" (Petition page 5.)

The gravamen of this complaint is, not that the Supreme Court of Alabama erroneously defined the

term "labor dispute" as used in Section 6 of the Alabama Act, but that with the definition of labor dispute, as announced by the Supreme Court of Alabama, the statute then becomes "repugnant to the Federal law giving collective bargaining and unemployment benefits."

We take it as conceded by petitioner that this Court will not interfere with the State Court's construction of its own statute.

His position is that had the definition of the words "labor dispute", as recently announced by the Supreme Court, been originally written into the statute by the Legislature, the law would have been "repugnant to the Federal law giving collective bargaining and unemployment benefits"; that is to say, the statute would have offended (a) the Social Security Act approved August 14, 1935, and (b) the National Labor Relations Act.

(a) Let us first consider the Social Security Act.

When the Social Security Board approved Alabama's 1935 Unemployment Compensation Act, as it was required to do by Title IX of the Federal Act, it approved it with the words "labor dispute" therein undefined. It must be assumed, therefore, that the Social Security Board approved the Alabama statute knowing that these words might be given the interpretation which they have in fact been given by the Supreme Court of Alabama. It is not alleged that the meaning ascribed to these words by the Alabama Court is arbitrary, illogical or palpably erroneous. Unless, therefore, petitioner can successfully attack

the definition of the term "labor dispute" given it by the Alabama Court, the Act stands approved by the Social Security Board.

We do not apprehend that the scope of this proceeding encompasses a discussion of the correctness of the definition given the term "labor dispute" by the Alabama Court.

(b) With respect to the National Labor Relations Act.

Nowhere in the National Labor Relations Act is it guaranteed to petitioner or to others situated as he was, that while collectively bargaining, he should receive any special consideraion under the Social Security Act or State laws enacted pursuant thereto. The National Labor Relations Act does not declare it to be an unfair labor practice for a State to deny payment of unemployment compensation under any circumstances. It is not declared to be the policy of the Act to require the strengthening of the economic position of employees while engaged in collective bargaining by the payment of unemployment compensation benefits. There is no phase of the National Labor Relations Act designed in any degree to affect an employee's eligibility for benefits under State Unemployment Compensation laws. There is no relationship, statutorily stated, between the payment of unemployment compensation and the right of collecive bargaining.

(2) The second question presented by petitioner is:

"2. Is the right to collective bargaining, or the interest of an employee in the Unemployment Trust Fund, a title, right, privilege or immunity, protected under the Fourteenth Amendment to the Constitution of the United States, and does the interpretation of 'labor dispute' and the denial of benefits, decreed by the Supreme Court of Alabama, give the Alabama statute a meaning which is in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, or of Federal statutes?" (Petition page 6.)

Without conceding that it is so, let it be assumed that (a) the right to collective bargaining and (b) the interest of an employee in the Unemployment Trust Fund, if there could be said to be such an interest, is each a right protected by the Fourteenth Amendment. The petitioner charges that these rights have been denied to him without due process of law.

The Fourteenth Amendment guarantees (1) judicial regularity with respect to the means and methods by which a right is denied, and (2) Legislative regularity with respect to the nature of the statute questioned.

First: With respect to judicial regularity, the record shows that in this case, before petitioner was denied his claim to compensation, there was an initial investigation by a Field Examiner of the State, a review of his findings by a tribunal created by State statute before which both parties were fully heard, a re-trial de novo in the Circuit Court, a court of general jurisdiction, a review in the State Court of Appeals, and finally, a review in the Alabama Supreme

Court. Certainly the plaintiff had his opportunity to be heard.

Secondly: As to the Constitutional correctness of the statute as it stands with the words "labor dispute" defined by the Supreme Court in this case. Applying the test long since established by this Court:

(a) The Act is definite and capable of being understood;

(b) It has a reasonable relation to legitimate Legislative purpose in that it defines, as it was necessary to do, the eligibility requirements for unemployment compensation;

(c) It is not arbitrary for the reason that there is strong public policy behind the Legislative purpose to afford no assistance to either party engaged in a labor dispute, and finally,

(d) It applies equally to all similarly situated and in no sense singles out petitioner for penalities or burdens not imposed on all others in his class.

(3) The third question presented by petitioner is:

> "3. Does the coordination of the Social Security Act with the Alabama Unemployment Compensation Act, and with similar acts of other States, and the creation of the Unemployment Trust Fund held by the United States and jointly administered by it with the several States, make the payment or nonpayment of benefits from such fund a Federal question, or are the decisions of

the several States final as to the control and operation of such trust fund?" (Petition page 6.)

The Social Security Act, approved August 14, 1935, at Title III, provides for grants to states for unemployment compensation, and, under the provisions of Title IX, levies a tax on employers of eight or more. The provisions of these titles are the only ones relating to unemployment compensation in the Act. Nowhere in these titles is there any provision for the control or determination of eligibility of claimants for unemployment benefits nor were there standards of any kind established in the Federal Social Security Act with respect to benefits, amount, duration, eligibility of workers, or disqualification of workers. Benefits are adjusted, state by state, through their separate laws governing the amount of money made available for benefit payments and eligibility conditions. The only requirement made of the State laws by the Social Security Act, approved August 14, 1935, with respect to the unemployment trust fund appears at Section 303(a) (4) and (5), which is as follows:

"Sec. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provision for—

* * *

"(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

"(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; * * *"

At Section 904, provision was made for the establishment in the Treasury of the United States of a trust fund to be known as the Unemployment Trust Fund, but, in providing for the establishment of the trust fund, the Federal law did not make provision whereby it was to be jointly administered by the Federal government and the several states. The return of this trust fund to the State on proper requisition is a Federal function, the payment of the money to the individual claimant is a State function.

CONCLUSION

For the reasons above set forth, there has been no violation of petitioner's right under the Social Security Act of 1935 nor under the National Labor Relations Act, nor an invasion of his right to due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment, and we respectfully suggest that the Petition for the Writ of Certiorari be denied.

Respectfully submitted,

Frank R. Broadway

FRANK R. BROADWAY of Montgomery, Alabama, General Counsel, Department of Industrial Relations of Alabama;

J. Eugene Foster

J. EUGENE FOSTER of Montgomery, Alabama, Assistant General Counsel, Department of Industrial Relations of Alabama;

James A. Simpson

JAMES A. SIMPSON of Birmingham, Alabama,

Attorneys for Respondent.

A copy of the foregoing brief has been served upon the attorney for the petitioner before the filing thereof in this Court, on this the 23rd day of May, 1941.

James A. Simpson

JAMES A. SIMPSON, of Counsel for Respondent.